

Assassination Records Review Board

§ 1410.35

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the Review Board records sought.

(c) The Review Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for Review Board records made under § 1410.25, it can determine that it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Review Board shall consider the following factors:

(1) Whether disclosure is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Whether the requester has a commercial interest and, if so, the extent of any interests and how they would be furthered by the disclosure of the requested Review Board records.

§ 1410.35 Fees for Review Board record requests.

(a) *Fees for Review Board records available through the Public Reading Room.* Duplication fees charged shall be limited to the costs of duplication of the requested Review Board records or the cost to have them duplicated. A schedule of fees for this duplication service is set forth at paragraph (b)(6) of this section. A person may also obtain a copy of the schedule of fees in person or by mail from the Public Reading Room.

(b) *Fees for Review Board records not available through the Public Reading Room (FOIA requests).*— (1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a re-

quester properly belongs in this category, the Review Board must determine the use to which a requester will put the documents requested. Moreover, where the Review Board has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Review Board will seek additional clarification from the Office of Management and Budget before assigning the request to a specific category.

Direct costs means those expenditures which the Review Board incurs in search, review, and duplication, to respond to requests under § 1410.25. Direct costs include, for example, the salary and benefits cost of Review Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Review Board records are stored.

Educational institution refers to a pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public, and may include cable casting or computer on-line dissemination if offered as a service that is organized and operated to disseminate news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but

only in those instances when the periodicals can qualify as disseminations of “news”) who make their products available for free and or for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A “freelance” journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract is the best proof, but the Review Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If the Review Board determines that the documents are requested for commercial use, it shall charge the average salary rate, including benefits, for Review Board employees, for document search time and for document review time, in addition to the costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Review Board’s charges shall be limited to the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2)(i) or (b)(2)(ii) of this section the Review Board shall charge the average salary rate for Review Board employees (including benefits), for document search time, and the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If the Review Board is asked by a requester to send Review Board records by special methods such as express mail, it may do so, provided that the requester pays for the express delivery service.

(v) The Review Board may assess charges for time spent searching, even if it fails to locate the records, or if Review Board records located are determined to be exempt from disclosure.

(vi) Whenever the Review Board estimates that fees are likely to exceed \$25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Review Board personnel to reformulate the request to meet the requester’s needs at a lower cost.

(3) *Limitations on Fees.* The Review Board, or its designate, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Review Board for a FOIA request would be less than the appropriate threshold, the Review Board shall not charge the requesters.

(4) *Payment of fees.* (i) Payment of fees must be by check or money order made payable to the Assassination Records Review Board.

(ii) *Advance Payments.* (A) If the Review Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, the Review Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(B) If a requester has previously failed to pay a fee in a timely fashion, the Review Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Review Board will begin to process a new request or pending request from that requester.

(C) When the Review Board requires advance payment under this paragraph, the administrative time limits prescribed in §1410.40(b) will begin only

Assassination Records Review Board

§ 1410.40

after the Review Board has received the fee payments.

(5) *Aggregation of Requests.* Requesters may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Review Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading assessment of fees, the Review Board may aggregate any such requests and charge the requester accordingly. The Review Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(6) *Fee Schedule.* Fees will be charged as provided below:

(i) *Duplication of Review Board records.* Review Board records will be duplicated at a rate of \$.10 per page, provided the Review Board staff duplicates the records. If the Review Board determines that the duplication is so time-consuming that it must be sent to an outside duplication service, the requester will be charged the actual commercial rate.

(ii) *Duplication of large documents.* Large documents (e.g., maps, diagrams) will be duplicated at actual commercial rates.

(iii) *Review.* Review fees shall be assessed with respect to only those requesters who seek Review Board records for a commercial use, as defined in (b)(2)(i) of this section. For each hour spent by agency personnel in reviewing a requested Review Board record for possible disclosure, the fee shall be \$20.15 except that where the time of managerial personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

(iv) *Search.* For each hour spent by administrative personnel in searching for and retrieving a requested Review Board record, the fee shall be \$14.75. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of Review Board records within the scope of a request requires the use of professional personnel—the fee shall be \$20.15 for each hour of search time spent by such professional personnel. Where the time of managerial

personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

§ 1410.40 Processing of FOIA requests.

(a) Where a request complies with § 1410.25 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

- (1) Granting the request;
- (2) Denying the request;
- (3) Granting or denying it in part;
- (4) Stating that the request has been referred to another agency under § 1410.25; or

(5) Informing the requester that responsive Review Board records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested Review Board records shall be taken within 10 working days of receipt of a request for Review Board records, as defined in § 1410.25, except that where unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting Review Board records is promptly informed in writing by the Designated FOIA Officer of the reason for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed 10 working days.

(c) For purposes of this section and § 1410.45, the term “unusual circumstances” may include but is not limited to the following:

- (1) The need to search, collect, and appropriately examine a voluminous amount of separate and distinct Review Board records that are demanded in a single request; or
- (2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.